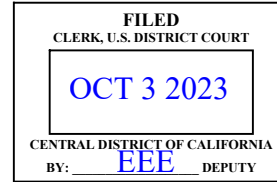


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5 **UNITED STATES DISTRICT COURT**
6 **CENTRAL DISTRICT OF CALIFORNIA**

7 **NEXT VIETNAM PROJECTS**
8 **FOUNDATION, INC., et al,**
9 **Plaintiffs,**

10 **v.**

11 **KOSTER FILMS LLC, and**
12 **FREDERICK KOSTER, et al,**
13 **Defendants.**

Case No. 8:22-cv-02130 JWH DFM
DEFENDANT AND
COUNTERCLAIMANT'S
MEMORANDUM OF POINTS
AND AUTHORITIES IN
OPPOSITION TO PLAINTIFFS AND
COUNTERDEFENDANTS'
NOTICE OF MOTION AND MOTION
FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT;
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT THEREOF

Date: October 20, 2023
Time: 9:00 a.m.
Courtroom: 9D
District Judge: Hon. John W.
Holcomb
Mag. Judge: Hon. Douglas F.
McCormick

20
21 1 DEFENDANT AND COUNTERCLAIMANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN
OPPOSITION TO PLAINTIFFS AND COUNTERDEFENDANTS' NOTICE OF MOTION AND MOTION FOR LEAVE TO
FILE FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREO

I. INTRODUCTION

Defendant and Counterclaimant Frederick Koster with good cause, filed on September 28, 2023 a “Request for Extension of Time to File Documents in Opposition to Plaintiffs’ Motion for Leave to File First Amended Complaint.

Due to the extraordinary circumstances as explained in Koster’s Request for Extension along with Plaintiffs setting a court date that did not allow Koster his 14 days to file his opposition, Koster is filing this abbreviated Opposition in case the Court does not approve his Request to extend.

Koster respectfully asks if the Court does approve his Extension that Koster would be allowed to amend or supplement this herein Opposition.

The Plaintiffs have filed an “Amended Complaint” not a “Supplemental Amended Complaint” thus what can only be amended in their complaint are facts that happened before the filing of the lawsuit not facts that arose after the filing of their lawsuit on November 23, 2022. A number of substantial changes brought forth by the Plaintiffs in their Amended Complaint occurred after the filing of their lawsuit (November 23, 2022) as noted herein.

1 The Federal Rules of Procedure 15 state that leave to amend should be given
 2 “when justice so requires” and when the amending complaint put forth is “not” in
 3 bad faith.

4 Plaintiffs’ Motion to Amend is in “bad faith” as it contains “major” changes to their
 5 original complaint that radically alters critical facts and claims of the lawsuit in an
 6 overt attempt to change their false statements that were made by the Plaintiffs in their
 7 original complaint.

8
 9 The Plaintiffs’ Amended complaint is also substantially deficient in reference to Local
 10 Rule 15-2. Although Plaintiffs amended complaint references the same exhibits as
 11 their original complaint which had over 100 pages of exhibits, there are “no” exhibits
 12 attached to their new amended complaint.

13 14 **II. ARGUMENT**

15 16 **1. BAD FAITH**

17 A. Plaintiffs in their original complaint stated that SBTN and VVFH paid

18 Koster \$300,000. Plaintiffs’ new Amended complaint adds the words to that
 19 sentence with “**or caused to be paid**”. (Exhibit B, pg. 2, line 16) This new

1 wording completely changes the meaning of this sentence to effectively
2 say that SBTN and VVFH did not pay Koster \$300,000 thus with this
3 new amended complaint the plaintiffs no longer have to prove that they
4 paid Koster the \$300,000. The Plaintiffs further, also deleted the
5 following wording while adding another word; “Koster, by his wrongful
6 conduct, acquired approximately \$300,000~~from the Producers~~ and has used
7 those funds for its own benefit.” (Exhibit B, pg. 25 lines 6-7) This is
8 Plaintiffs’ overt attempt in bad faith to change a false statement they made in
9 their original complaint.

10
11 B. Although Plaintiffs reference the same exhibits (A through M) as their
12 original complaint in their new amended complaint, these referenced
13 exhibits are “not” attached to their new amended complaint. Plaintiffs
14 eliminated over 100 pages of their original Exhibits. This loss is critical,
15 substantial and done in bad faith to Koster, as he had used these Plaintiffs’
16 exhibits and declarations extensively in his Affirmative Defenses. As further
17 bad faith from the Plaintiffs, the Plaintiffs attorney in his declaration did not
18 “note, explain or detail” the elimination of these 100 pages of exhibits in
19 their red line copies or declaration.

1 C. Plaintiffs changed the name of a Plaintiff from “**Thanh-Mai Nguyen**
2 **changed to Than Phoung Le**” (Exhibit B, pg. 1, line 17) without
3 explaining a reason for it. Is this the same person? If so, why did they
4 not use their real name? Or is it a different person? Then why did the
5 first person leave the lawsuit?
6

7 D. Plaintiffs Dr. Trong Phan ("Dr. T. Phan") and Mr. Son Nguyen ("Mr. S.
8 Nguyen") stated in their original complaint that they appeared in the Film
9 and were suing Koster for “Misappropriation of Likeness” but they now
10 state that they were “not” in the Film and the Plaintiffs new amended
11 complaint have now removed Dr T. Phan and Mr. S. Nguyen names
12 from their Fourth Cause of Action. (Exhibit B, pg. 3, lines 6 and 7)
13

14 Dr T Phan and Mr. S Nguyen were never even filmed by Koster so these
15 Plaintiffs knowingly made false statements in their original complaint and
16 now in bad faith are trying to back out of it. What makes this bad faith
17 much worse is that in their Cause of Action Four they claimed that Koster
18 actions resulted in horrible consequences for them that included:
19

20 “97. The Individual Plaintiffs have been harmed by Defendants’
21 misappropriation (including, without limitation, harm to their reputations,

1 personal feelings, and because their work on the Film was uncompensated),
2 which misappropriation was a substantial factor in causing their harm.

3 98. In addition, as a result of Defendants' misappropriation, the Likeness
4 Plaintiffs have suffered and will continue to suffer irreparable harm through,
5 without limitation, the loss of goodwill, and they have no adequate remedy
6 at law with respect to this injury. Unless Defendants' misappropriation is
7 enjoined by this Court, the Likeness Plaintiffs will continue to suffer
8 irreparable harm."

9 E. Plaintiffs in their original complaint stated that Richard Botkin was a
10 Vietnam War Veteran, now in Plaintiffs' new Amended Complaint, the
11 Plaintiffs now state that Richard Botkin is "not" a Vietnam War veteran.
12 ~~"who served during the Vietnam War"~~ (Exhibit B, pg. 18, line 16) This
13 was obvious attempt to influence the court. To present this statement as
14 the truth in a court proceeding and then stating it was wrong, is not a
15 minor change and is in bad faith. Their false statement is considered
16 Stolen Valor.

17 F. The Plaintiffs have added 9 extra plaintiffs into the Third Cause of
18 Action without explaining a reason for it. ~~"Producers changed to~~
19 ~~Plaintiffs"~~ (Exhibit B, pg. 20, line 22) This is not a minor change and has
20 a major implication in the plaintiffs complaint. Adding these many
21 plaintiffs to one Cause of Action was done in bad faith.

1 G. The Plaintiffs added the following wording which is hugely contradictory to
2 their previous statements and legal position. Plaintiffs in bad faith are taking
3 a completely different legal position based on Koster Affirmative Defenses
4 and Discovery. “That Plaintiffs are joint authors of the Film in light of their
5 substantial contributions thereto and that Plaintiffs are entitled to an
6 equitable license to the Film and all related material, including the
7 Interviews.” (Exhibit B, pg. 25, lines 23-26)
8

9 **2. VIOLATION OF LOCAL RULE 15-2**

10 “***L.R. 15-2 Complete Document.*** Every amended pleading filed as a matter
11 of right or allowed by order of the Court shall be complete including
12 exhibits. The amended pleading shall not refer to the prior, superseded
13 pleading.”
14

15 The Plaintiffs’ Amended complaint is substantially deficient and in violation in
16 reference to Local Rule 15-2. Plaintiffs’ new amended complaint references the
17 same exhibits as their original complaint which had over 100 pages of exhibits,
18 but there are “no” exhibits attached to their new amended complaint.
19

1 Plaintiffs' attorney Jacob Poorman states in his Declaration that all new changes
 2 in the Plaintiffs' amended complaint are noted and detailed but there is no
 3 mention of the deleted exhibits of the Plaintiffs' original complaint.

4 6. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiffs'
 5 First Amended Complaint.

6 7. Attached hereto as **Exhibit B** is a list of all wording added to
 7 Plaintiffs' First Amended Complaint.

8 8. Attached hereto to as **Exhibit C** is a redlined comparison between the
 9 original Complaint and the proposed First Amended Complaint.

10 Poorman does not note, detail or explain why the Plaintiffs' original
 11 complaint's exhibits of over 100 pages no longer part of the new amended
 12 counterclaim.

13 Poorman also does not provide answers to the following required questions.

- 14 - When the facts giving rise to the amended allegations were discovered;
- 15 - The reasons why the request for amendment was not made earlier.

16 **3. "AMENDED COMPLAINT" not a "SUPPLEMENTAL AMENDED** 17 **COMPLAINT"**

18 The Plaintiffs have filed an "Amended Complaint" not a "Supplemental
 19 Amended Complaint" thus what can only be amended in their complaint are
 20 facts that happened before the filing of the lawsuit not facts that arose after the
 21 filing of their lawsuit on November 23, 2022.

1
2 Plaintiffs removed this sentence in their new amended complaint;

3 ~~“To date, the Defendants have not provided the Next Vietnam Foundation or~~
4 ~~the Producers with footage of the ninety three Interviews or the Film.”~~ Page
5 17 line 21-22

6 At the time of the filing of the plaintiffs’ original Complaint (November 23,
7 2022) the Plaintiffs did not have possession of Koster’s Film and Interviews.
8 Their possession of Koster property came afterwards when they took Koster
9 property from Koster’s subcontractor and codefendant Tooker in May of 2023.

9 **4. UNDUE DELAY**

10 Plaintiffs originally filed their complaint on November 23, 2023 and have had
11 ample time and opportunity to previously file an amended complaint but waited 11
12 months to do so.

13
14 Although Plaintiffs are naming their current Motion as a “First Amended Complaint”,
15 Plaintiffs have previously filed and were approved for an Amended Complaint and
16 Correction on May 4, 2023 (Docket 48). At this time, the Plaintiffs could have made
17 their needed changes instead of waiting until the midst of Discovery.

1 Also, on May 23, 2023 (Docket 56), the Judge gave both parties a window of
2 opportunity to amend their previous filings with the Court.

3
4 Before the plaintiffs filed their amended complaint Discovery had already started
5 between the parties has included the 26 f report, interrogatories that Plaintiffs sent to
6 Koster and he answered back, and Koster sent his interrogatories to Plaitiffs. before
7 the plaintiffs' filed their amended complaint.

8
9 **CONCLUSION**

10 For the foregoing reasons, Defendant Koster respectfully requests that the
11 Plaintiffs' motion to amend be denied or partially denied.

12
13 Defendant Koster respectfully asks if the Court does approve Koster request for an
14 Extension to file documents that Koster would be allowed to amend or supplement this
15 herein Opposition.

16 Respectfully submitted October 3, 2023

17
18 *Frederick Koster*

19 **Frederick Koster Pro Per**

20 10 DEFENDANT AND COUNTERCLAIMANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN
21 OPPOSITION TO PLAINTIFFS AND COUNTERDEFENDANTS' NOTICE OF MOTION AND MOTION FOR LEAVE TO
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